IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Criminal appeal No.666 of 2000

Date of Decision: 24th October, 2007

State of Himachal Pradesh	Appellant
Versus	
Mohinder Singh and others	Respondents

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant: Mr.Virender Verma, Addl. Advocate General.

For the respondent: Mr.Bhuvnesh Sharma, Advocate.

Sanjay Karol, J. (Oral)

The present appeal arises out of the judgment dated 1st March, 1999, passed by Additional Chief Judicial Magistrate, Nurpur, District Kangra, H.P. in Cri. Case No. 22-II/97, titled as State of H.P. vs. Mohinder Singh and others, acquitting the accused of the charged offence.

Briefly stated the facts of the case are that complainant Bidhi Chand (PW-1) and his brothers who are resided at Village Riali and were jointly owing the properties. On 13.12.1995 at about 4.00 p.m. accused forcibly ploughed the joint land and gave beatings to Bidhi Chand with Danda. Smt. Nirmala Devi (PW-4) also reached at the spot and the accused Sh. Baldev also gave beatings to her. Both PW-1 and PW-4 sustained injuries and were saved by Shri Prem Singh and Malkiyat Singh. The matter was reported to the police and on FIR No.20/96 (Ext.PW-8/A) under Sections 325, 323 read with Section 34, IPC was registered with

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

Police Station Indora. During investigation, the injured were got medically examined and Dr. B.M.Gupta (PW-5) given his opinions vide MLC dated 13.12.1995 (Ext.PW-5/A) pertaining to PW-1 and MLC (Ext.PW-5/B) and X-rays dated 16.12.1995 (Ext.PW-6/A) pertaining to PW-5. The weapon of offence i.e. the Danda was taken into possession vide seizure memo (Ext.PW-10/B).

After completion of investigation, Challan was presented in the Court for trial. The accused were charged for an offence under Sections 323, 325 read with Section 34, IPC. They did not plead guilty and claimed trial. In order to prove its case, prosecution examined 10 witnesses. Statements of accused under Section 313, Cr.P.C. were also recorded.

After examining the depositions of witnesses, the Court below came to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt. The accused persons were liable to be acquitted for the reasons that none of the independent witness had supported the case of the prosecution.

Bidhi Chand (PW-1) complainant, Prem Singh (PW-2) and Hoshiar Singh (PW-7) independent witnesses, have not supported the case of the prosecution at all. Desh Raj (PW-3) is also a witness. Smt. Nirmala Devi (PW-4) wife of PW-3 is the injured, who was present at the spot. Dr.B.M.Gupta (PW-5) has medically examined PW-1 and PW-4. Kewal Kishore Sharma (PW-6) is the Radiologist, who conducted the x-rays on PW-4. SI Shakti Chand (PW-8), HC Bhagirath (PW-9) and HC Santosh Singh (PW-10) are police officials, who have conducted the investigation in the matter from time to time.

From the statements of PW-2 and PW-7, it is clear that they were declared hostile and even on cross-examination by the Public Prosecutor, they have not supported the case of the prosecution. There is nothing in their statements, which would show the culpability of the accused persons with the charged offence. The other independent witness is Desh Raj (PW-3). In my view, much reliance cannot be placed on his statement for the reason that in his cross-examination he has admitted that he reached the place of occurrence after the quarrel was over. In view of this statement his earlier version that the accused persons had given beatings to PW-1 and PW-4 cannot be relied upon particularly when he has stated that even he was beaten up by the accused persons, which in fact is not the case of the prosecution or their witnesses at all. This version is also not supported by any of the witnesses, medical evidence and other material on record. His testimony, therefore, does not inspire confidence.

Dr.B.M.Gupta (PW-5) has deposed that the injuries on the body of PW-1 were simple and the injuries on the body of PW-4 were simple and grievous. The injury is proved.

Even though PW-4 was medically examined on 13.12.1995, however, her x-rays (Ext.PW-6/A) were got done only on 16.12.1995. There is no explanation on record to explain the delay. In the aforesaid background, statements of PW-1 and PW-4 need to be examined to see as to whether the case of the prosecution stands proved beyond reasonable doubt. Bidhi Chand (PW-1) has admitted in his cross-examination that accused persons are his real brothers and they are not on speaking terms. PW-4 has also admitted that the relations between the families are strained and they are not on speaking terms and have not been visiting each other.

The quarrel admittedly started due to the ploughing of the land jointly owned by the parties.

In my view the version of both PW-1 and PW-4 does not appear to be correct and their testimony cannot be relied upon. There are inherent contradictions in their statements. As per the version of PW-1 only accused Sher Singh was having Danda and none of the other accused persons were carrying any weapon, but PW-4 has stated that all the accused persons were having Dandas in their hands and beating PW-1. Further, PW-4 has stated that when she intervened to save PW-1 from the clutches of the accused persons, accused Baldev Singh put her hand in his mouth and she received injury and blood was coming out, but she has admitted that she kept quiet and did not say anything and Prem Singh saved them. It is quite improbable that an injured person would keep quiet and not shout for help or cry out of pain. She has further admitted that her medical was got done 2 days and x-rays 4-5 days after the incident. This statement is falsified by the version of PW-1, according to whom the medical examination was done on 10.1.1996. However, perusal of MLC (Ext.PW-5/A) shows that the medical examination was actually done on 13.12.1995. The witnesses have deposed contrary to the record.

The case of the prosecution was not supported by two independent witnesses. No other witness was associated by the Investigating Agency in spite of the fact that both PW-1 and PW-4 have stated that there were 20-25 persons available at the spot at the time of occurrence of the incident. PW-1 was particular in mentioning the name of Prem Singh and Malkiyat Singh. Prem Singh has not supported the case of the prosecution. Malkiyat Singh has not been associated by the police nor examined in the Court. Not much credence can be given to the statement

of PW-3 and, therefore, the case of the prosecution, in my view, does not appear to be true and it cannot be said that the prosecution has been able to prove its case beyond reasonable doubt..

The accused persons have the benefit of having been acquitted by the Court below. The material on record has been correctly appreciated and there is no perversity in the same. I see no reason to interfere and the appeal is accordingly dismissed. Bail bonds stand discharged.

24th October, 2007
(C)

(Sanjay Karol)
Judge